

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**MAY 09 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

V.

JUAN CARLOS MIRANDA-YUKE,

Defendant-Appellant.

No. 05-10448

D.C. No. CR-04-40089-1-CW

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Claudia Wilken, District Judge, Presiding

Submitted April 7, 2006<sup>\*\*</sup>  
San Francisco, California

Before: SILER<sup>\*\*\*</sup>, BERZON, and BYBEE, Circuit Judges.

Defendant Juan Carlos Miranda-Yuke appeals his conviction for illegal reentry into the United States in violation of 8 U.S.C. § 1326. He argues: (1) the government

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

<sup>\*\*\*</sup> The Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

presented insufficient evidence of his alienage, an essential element of the crime of illegal reentry; and (2) his sentence was improperly enhanced by judge-found facts when the district court increased his statutory maximum on account of a prior felony conviction.

To prove the element of alienage, the government presented evidence of Miranda-Yuke's past admissions of alienage, four prior orders of deportation, his previous use of aliases in dealings with immigration officials, and his history of entering the United States without inspection. This evidence was sufficient to satisfy the government's burden of proof. *See United States v. Galindo-Gallegos*, 244 F.3d 728, 732 (9th Cir. 2001).

As for the second ground of appeal, the fact of a prior conviction is an exception to the normal Sixth Amendment rule requiring that all facts necessary to support a sentence be admitted by the defendant or proved to a jury beyond a reasonable doubt. *See United States v. Booker*, 543 U.S. 220, 244 (2005); *Almendarez-Torres v. United States*, 523 U.S. 224, 239-47 (1998). Despite Miranda-Yuke's arguments to the contrary, the *Almendarez-Torres* exception has not been overruled by the Supreme Court and continues to be controlling precedent. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005).

AFFIRMED.